

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

ANDREA MARTIN,
Plaintiff and Respondent,
v.
GREGORIO DE LOA, JR.,
Defendant and Appellant.

A142696

(Contra Costa County
Super. Ct. No. MSN14-0848)

Defendant Gregorio De Loa, Jr. (Gregorio) appeals a civil harassment restraining order issued at the request of plaintiff Andrea Martin (Andrea).¹ He contends that there was not clear and convincing evidence of harassment, that the court exhibited religious bias in granting the order, and that he was denied a fair opportunity to respond to the allegations against him. He also argues that the court exceeded its jurisdiction by changing the location designated by a San Joaquin County court for a child custody exchange. We affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In June 2014,² Andrea filed a request for civil harassment restraining orders seeking protection from Gregorio, whom she claimed had verbally threatened her. Andrea is the sister of Gregorio's ex-wife, Bianca. In her request for restraining orders,

¹Because many of the witnesses and parties share the same surnames, we refer to them by the first names for purposes of clarification. No disrespect is intended.

²All dates to which we refer fall within calendar year 2014 unless otherwise specified.

Andrea described an incident that occurred on June 4 when she and her husband brought Gregorio's two children to a child custody exchange. She wrote that Gregorio threatened to kill her and Bianca. In a lengthy attachment to the request, Andrea identified herself as a registered nurse and described an alleged sexual assault by Gregorio that occurred several years earlier. She also wrote that Bianca has serious medical issues and had sought a restraining order against Gregorio in 2011. Andrea stated that Bianca chose to drop the earlier request for a restraining order after Gregorio agreed to undergo counseling, take parenting classes, and have supervised visits with the children. The court issued a temporary restraining order and set the matter for hearing on July 3.

In a written response to Andrea's request for civil harassment restraining orders, Gregorio generally denied the allegations against him. He wrote that nothing she alleged was true except that he was married to Bianca and has two children with her, that he and Bianca have regular custody exchanges, that Bianca has significant medical issues, and that Andrea is a registered nurse. While he conceded that Andrea had tried to help Bianca obtain a restraining order against him in the past, he claimed it was part of an effort to influence ongoing divorce proceedings in San Joaquin County and to allow Bianca to have sole custody over their children. Gregorio claimed that the custody exchange on June 4 was the first one in about two years that Andrea and her husband had attended, and he proposed that Andrea stay away from future custody exchanges to avoid further incident. With his written response, Gregorio supplied a copy of the police report relating to the June 4 incident, and he attached a letter from a lawyer reflecting an oral agreement to change the location of the custody exchange following the June 4 incident.

At a hearing conducted on July 3, the court heard testimony from Andrea, Gregorio, Bianca, and Andrea's husband, Scott. Andrea testified that Gregorio was formerly married to her sister, Bianca. Gregorio and Bianca have joint custody of their two boys. Bianca has brain tumors, is legally blind, and cannot drive as a result. According to Andrea, she and Scott often drive Bianca and her children to an agreed-upon location to facilitate custody exchanges with Gregorio. Andrea testified that Gregorio threatened her life during a custody exchange on June 4. She said she walked

up to Gregorio to remind him that one of the children had a doctor's appointment. Gregorio responded: " '[S]hut up bitch. I am going to kill you and your sister and you'll never see the boys again.' " Andrea ran to her car with Gregorio's youngest child still in her arms because she was afraid for her life. She called 911 to report the incident. The police arrived on the scene but no one was arrested.

Andrea's husband, Scott, testified that he was present at the custody exchange on June 4 but that he did not hear the conversation between Andrea and Gregorio because he was distracted by a phone call. Scott claimed to have seen threatening text messages from Gregorio on Andrea's cell phone on the day of the hearing and had called the Pittsburgh Police Department to report the threats.

Gregorio's ex-wife, Bianca, testified that she was ill on June 4 and consequently did not accompany her sister and Scott to the custody exchange with Gregorio. She explained that she and Gregorio were in the middle of a contentious custody battle. She said that Gregorio bullied and abused her during their marriage and that he does everything he can to prevent her from seeing their children.

Gregorio was given an opportunity to respond and testified that the accusations against him were completely untrue. He stated that Andrea, Scott, and Bianca would do anything to hurt him. He specifically denied making threats to Andrea on June 4 and directed the court to the police report attached to his written response. The police report reflects that no one other than Andrea heard any threats and that the child custody exchange was completed without incident in the presence of sheriff's deputies. According to the police report, no arrests were made and all parties left the scene. Gregorio emphasized the fact that no arrest was made, which he claimed was proof Andrea had lied about the alleged threats. He also expressed concern that a restraining order against him might adversely affect a future career in law enforcement.

Following Gregorio's testimony, the court inquired whether there was a way to resolve the matter short of issuing a restraining order. The parties discussed various alternatives to avoid having Andrea and Gregorio meet at custody exchanges. Andrea insisted she did not trust Gregorio and that he had promised to change his behavior in the

past but had failed to do so. She mentioned that Gregorio had sexually assaulted her in 2011 and that she had sought a protective order for Bianca at about the same time. She said that she and Bianca agreed not to seek a permanent restraining order at the time after Gregorio pursued counseling but that his bullying and threatening behavior persisted and culminated in the June 4 incident. In addition to seeking an order directing Gregorio to stay away from her, Andrea requested changing the location of the child custody exchange, which had previously occurred at a sheriff's annex that was isolated and not staffed when the exchanges occurred.

The court found clear and convincing evidence that warranted the issuance of a restraining order. Accordingly, the court issued a civil harassment restraining order with a duration of three years. The order prohibits Gregorio from contacting or harassing Andrea, Scott, or their son, except that Gregorio may have contact with the protected parties for the limited purpose of facilitating the "safe exchange" of Gregorio and Bianca's children. The court ordered the child custody exchanges to take place at the Brentwood Police Department.³ The order directs Gregorio to stay at least 100 yards away from Andrea, Scott, and their son. The court also ordered him to stay away from Andrea's home, workplace, vehicle, her son's school, the location of her son's child care, and a church in Pittsburg that Scott and Andrea attend.

Gregorio filed a timely appeal. Because the hearing on the restraining order was not reported, Gregorio applied for permission to prepare a settled statement on appeal in place of a reporter's transcript. After the trial court granted permission to prepare a settled statement, Gregorio submitted a proposed statement. The court held a hearing to settle the statement, with Andrea appearing by phone and Gregorio appearing in person. The court issued a settled statement on appeal accompanied by a certification that the statement of the matters heard on July 3 is "true, correct, and accurate."

³The written order directs the exchanges to take place at the Brentwood Police Department, although the court's settled statement on appeal lists the exchange location as the Pittsburg Police Department.

DISCUSSION

1. Sufficiency of the evidence supporting restraining order

Gregorio challenges the court's decision on three grounds relating to evidence considered or rejected by the court. First, he claims there was not clear and convincing evidence of harassment that would support the issuance of a restraining order. Second, he contends the court did not give him a fair opportunity to respond to the allegations against him. Third, he argues that the court exhibited religious bias by purportedly allowing evidence of Andrea and Scott's Christian beliefs to bolster their credibility. As we explain, these claims lack merit.

Code of Civil Procedure⁴ section 527.6, subdivision (a) authorizes a court to issue an injunction or protective order prohibiting harassment. "Harassment" is defined as "unlawful violence, a credible threat of violence, or a knowing and willful course of conduct directed at a specific person that seriously alarms, annoys, or harasses the person, and that serves no legitimate purpose. The course of conduct must be such as would cause a reasonable person to suffer substantial emotional distress, and must actually cause substantial emotional distress to the petitioner." (*Id.*, subd. (b)(3).) For a section 527.6 protective order to be issued, the trial court must find unlawful harassment by clear and convincing evidence. (*Id.*, subd. (i).) When considering a claim that the evidence is insufficient to support the court's issuance of a section 527.6 restraining order, "[w]e resolve all factual conflicts and questions of credibility in favor of the prevailing party and indulge in all legitimate and reasonable inferences to uphold the finding of the trial court if it is supported by substantial evidence which is reasonable, credible and of solid value." (*Schild v. Rubin* (1991) 232 Cal.App.3d 755, 762.) The substantial evidence rule applies without regard to the standard of proof required at trial. In other words, the standard of review remains substantial evidence even if the standard below is clear and convincing evidence. (*See Crail v. Blakely* (1973) 8 Cal.3d 744, 750; *In re Marriage of*

⁴Further statutory references are to the Code of Civil Procedure unless otherwise specified.

Ruelas (2007) 154 Cal.App.4th 339, 345; *In re Mark L.* (2001) 94 Cal.App.4th 573, 580–581.)

In this case, there was substantial evidence supporting the issuance of the restraining order. Andrea testified that Gregorio threatened to kill her when they met on June 4 during the course of a child custody exchange. Andrea described a pattern of abusive behavior that had gone on for years and noted that Gregorio’s ex-wife, Bianca, had previously sought a restraining order against him and only dropped the matter when he promised to change his behavior. Further, Andrea described how the conduct caused her to suffer emotional distress and fear for her safety. This evidence, by itself, supports the issuance of the restraining order under section 527.6.

Gregorio argues that Andrea’s allegations concerning the June 4 incident were not substantiated by the police or corroborated by any witnesses. Likewise, he points out that there was no independent corroboration of the sexual assault that allegedly occurred in 2011. As for threatening text messages from Gregorio that Andrea and Scott claimed to have seen, Gregorio complains that no documentary evidence supporting the claims was presented to the court. He also argues there was an inconsistency between Andrea’s written statement and her oral testimony concerning who was generally present at child custody exchanges.

In essence, Gregorio challenges Andrea’s credibility and the weight to be given to her testimony. However, it is not our role as a reviewing court to assess witness credibility and reweigh the evidence that was before the trial court. (See *In re Mark L.*, *supra*, 94 Cal.App.4th at p. 581.) While corroborating evidence may have made Andrea’s testimony more compelling, her account of events of which she has direct knowledge nevertheless qualifies as substantial evidence. The testimony of a single witness may constitute substantial evidence to support a judgment even if the witness is a party and the testimony is self-serving. (*In re Marriage of Mix* (1975) 14 Cal.3d 604, 614.) Consequently, we reject Gregorio’s attempt to discount Andrea’s testimony.

Gregorio asserts that he was denied a fair opportunity to present his defense because the court denied his request to present additional documentary evidence he

brought with him to the hearing. As support for this claim, he cites to his *proposed* settled statement on appeal. Gregorio's claim fails for a number of reasons.

First, the record on appeal does not support Gregorio's claim. The settled statement certified by the trial court does not contain any reference to an attempt by Gregorio to present additional evidence or the trial court's refusal to allow any such evidence to be presented. The certified settled statement is the official record of the oral proceedings in the trial court; Gregorio's proposed settled statement is not properly before us as a record of what transpired in the trial court.

Insofar as Gregorio seeks to challenge the trial court's settled statement, he has failed to make a showing that would cause us to reject it. The settlement of the record is a question of fact to be resolved by the trial court, which is in the best position to know what occurred. (See generally Cal. Rules of Court, rule 8.137; *People v. Beardslee* (1991) 53 Cal.3d 68, 116; *Sidebotham v. Superior Court* (1958) 161 Cal.App.2d 624, 628 [appellate court has "no familiarity with the oral proceedings at the trial" and no basis to "measure adequacy or inadequacy" of the settled statement].) The trial court retains " 'full and complete power' " to make a final determination of the content of the settled statement absent a showing that the court acted in an arbitrary fashion. (*Marks v. Superior Court* (2002) 27 Cal.4th 176, 195; *Pollard v. Saxe & Yolles Dev. Co.* (1974) 12 Cal.3d 374, 376, fn. 1.) Gregorio has made no showing that the court acted in an arbitrary fashion. To the contrary, the court allowed Gregorio to submit a proposed settled statement, held a hearing at which it allowed the parties to comment, and produced a certified settled statement. The mere fact the court rejected portions of Gregorio's proposed settled statement does not establish that the court acted arbitrarily. The trial court has broad discretion to accept or reject a party's representations in settling the statement of the oral proceedings. (*People v. Beardslee, supra*, 53 Cal.3d at p. 116.)

In addition to the lack of record support for Gregorio's claim of being denied the opportunity to present a defense, the record affirmatively reveals that Gregorio was allowed the opportunity to present relevant evidence and respond to the allegations against him. Gregorio relies on authority that stands for the proposition that a judge is

required to receive relevant testimony and must afford a person charged with harassment “a full opportunity to present his or her case” (*Nora v. Kaddo* (2004) 116 Cal.App.4th 1026, 1028.) But in the case relied upon by Gregorio, the judge refused to consider *any* oral testimony and chose instead to rely exclusively on the parties’ written declarations and exhibits. (*Id.* at pp. 1028–1029.) That is not the case here. There is no showing that Gregorio was denied the opportunity to testify. At most, he claims the court refused to consider some documents, but he does not explain what the documents were, what they would have shown, or even that they would have been relevant. Gregorio has failed to make an adequate showing on appeal that he was denied the right to present relevant evidence.

Gregorio’s final claim with respect to the evidence is that the court applied “religious bias” in weighing the evidence. He asserts that Andrea and Scott made numerous statements about their Christian religious beliefs and that the court purportedly stated to them, “ ‘You seem like a good Christian family, I believe you.’ ” Gregorio argues that the court’s action violates the principle that “[e]vidence of [a witness’s] religious belief or lack thereof is inadmissible to attack or support the credibility of a witness.” (Evid. Code, § 789.)

The religious bias claim fails because the record does not support it. Gregorio relies entirely upon his own proposed settled statement and objections he filed to the court’s certified settled statement. The certified settled statement does not contain the statements relied upon by Gregorio. As discussed above, the trial court’s settled statement is the final record of the oral proceedings in the trial court unless there is a showing that the court acted arbitrarily, and there is no such showing here. Further, there is nothing in the settled statement certified by the trial court that would suggest the court admitted testimony on religious beliefs for the purpose of assessing the parties’ credibility.

2. Order purportedly in excess of court’s jurisdiction

As a final matter, Gregorio argues that the court exceeded its jurisdiction by changing the location of the child custody exchanges. He contends Andrea had no

standing to seek changes to a custody order in a family court matter between him and his ex-wife, Bianca. He also asserts that the court “impermissibly interjected itself” into the San Joaquin County family law matter by altering the family court’s custody order.

Gregorio’s claim fails for a variety of reasons, including that he failed to cite any legal authority to support it. We may treat an argument as waived when no legal authority is cited to support the argument. (See *People v. Stanley* (1995) 10 Cal.4th 764, 793.) Further, the record is inadequate to assess the claim because it does not even contain a copy of the custody order that the court supposedly interfered with when it changed the location of the child custody exchange. As for the merits of Gregorio’s claim, we have no reason to believe that an order changing the location of a child custody exchange fundamentally impinges upon the authority of a family court in another county to control the proceedings before it. The challenged order does not change the custodial orders or Gregorio’s right to joint custody of the children in any substantive respect.

DISPOSITION

The civil harassment restraining order is affirmed. Each party shall bear its own costs on appeal.

McGuiness, P.J.

We concur:

Pollak, J.

Siggins, J.